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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/847,264	05/02/2001	Lyn Rosenboom	457009-2	6915

7590 05/01/2006  
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EXAMINER

BATSON, VICTOR D

ART UNIT PAPER NUMBER

3671

DATE MAILED: 05/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/847,264

Applicant(s)

ROSENBOOM, LYN

Examiner

Victor Batson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 February 2006.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.  
4a) Of the above claim(s) 3-5 is/are withdrawn from consideration.  
5) ☒ Claim(s) 2 is/are allowed.  
6) ☒ Claim(s) 1, 6-8 and 12 is/are rejected.  
7) ☒ Claim(s) 9-11 and 13 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION*****Claim Rejections - 35 USC § 102***

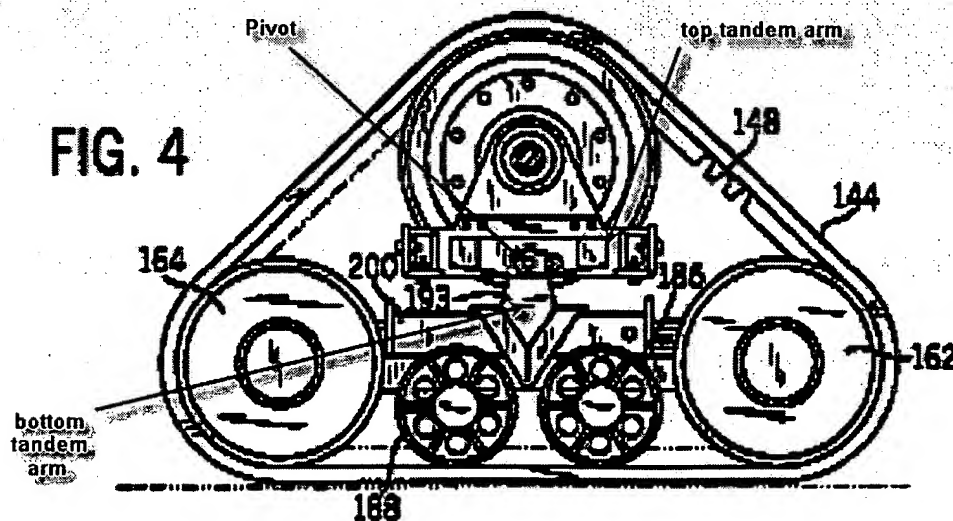
The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

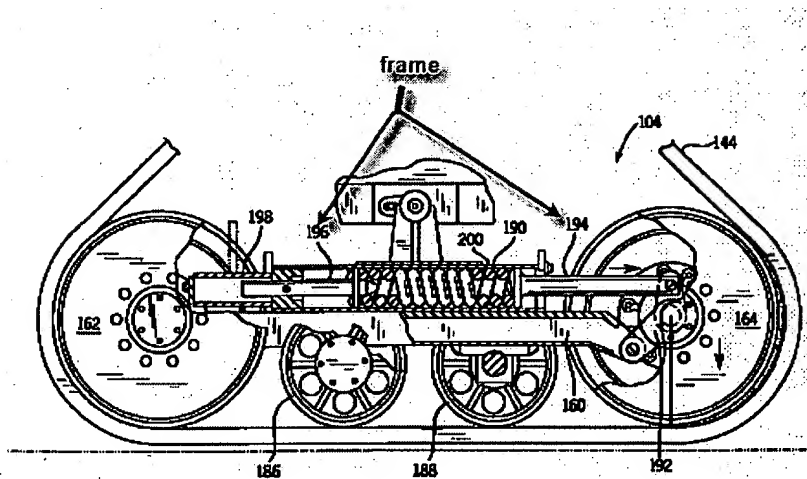
A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 & 12 are rejected under 35 U.S.C. 102(e) as being anticipated by Lykken et al. (6,318,484).

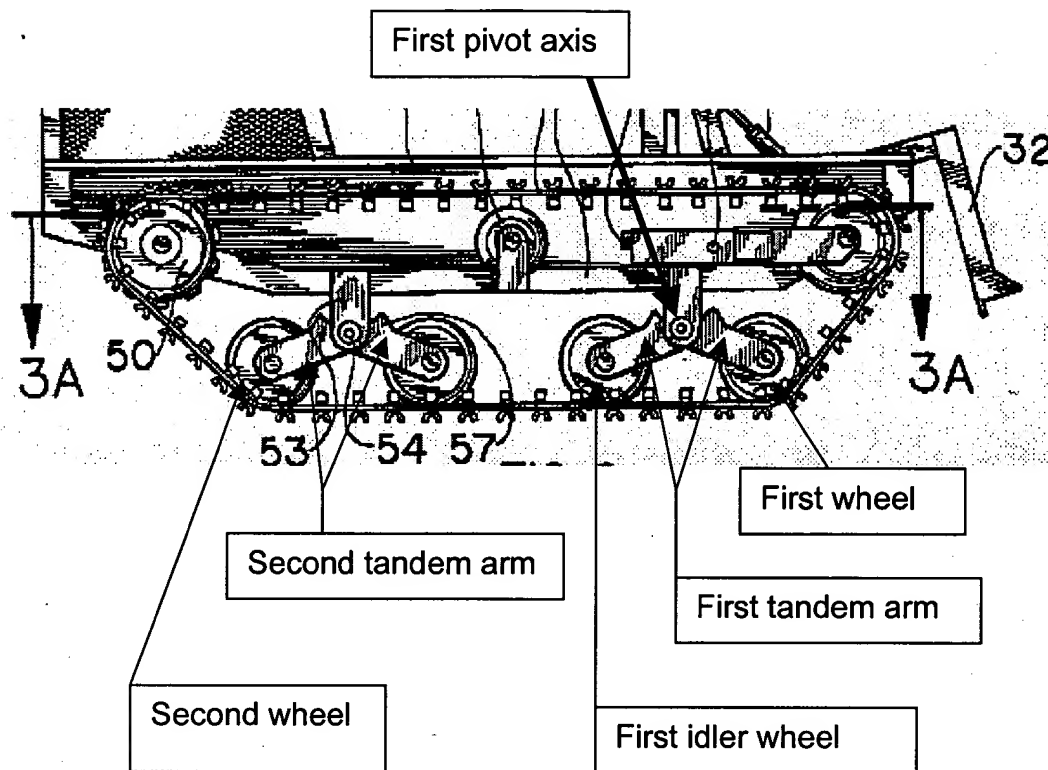
Lykken et al. discloses a track assembly having all of applicant's claimed structure including a top tandem arm 102, a bottom tandem arm 193, an adjustable frame (including members 194 & 196 shown in figure 6) for adjustably spacing front and rear idler wheels 164 & 162, and a belt 144 as shown in figures 3 & 4.





Claims 6-8 are rejected under 35 U.S.C. 102(e) as being anticipated by Gignac (6,125,956).

Gignac discloses a track assembly having all of applicant's claimed structure including a wheel frame, a first tandem arm 46 pivotally connected to the wheel frame, a first wheel operably connected to the wheel frame by the first tandem arm, a second wheel 60, a continuous ground-engaging belt, a first idler wheel structure as identified in the modified figure below. Gignac further discloses a hitch member 105.



### ***Allowable Subject Matter***

Claims 9-11,13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 2 is allowed.

### ***Response to Arguments***

Applicant's arguments filed 2/8/06 have been fully considered but they are not persuasive. Applicant argues that neither Lykken nor Gignac correspond to the claims as amended. The examiner disagrees and notes that applicant's arguments are more limiting than the claims themselves. For example, in claim 1 applicant does not include

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structure that would preclude members 194 & 196 from being considered the frame.

Applicant argues that the structure asserted as the top tandem arm ("idler wheel carriage 102") is not pivotal because it is rigidly attached to the frame by mountings.

Although the carriage 102 is rigidly attached to mountings 20, the examiner notes that carriage 102 is pivotally attached to the frame (considered the combination of members 194 & 196) by it's pivotal connection to member 193 (see figures above). Applicant further argues that Lykken does not have a first wheel attached to its top portion. The examiner notes that the limitation "attached" is considered similar to "connected to one another", which includes being joined together, but is broader than that, in that two things can be "connected" to each other by way of their common connection to something else. *Kreis AG v. American Hospital Supply Corp.* (DC NIII) 192 USPQ 585.

Applicant further argues that Gignac does not show or suggest the first idler wheel structure and the first wheel rock about the first pivot axis in a reciprocating manner to maintain a desired distribution of weight between said first wheel and said first idler wheel structure. It is the examiner's position that the first wheel and the first idler wheel rock about a first pivot axis (see figure above), and that the phrase "to maintain a desired distribution of weight between said first wheel and said first idler wheel structure" is considered an intended use recitation.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor Batson whose telephone number is (571) 272-6987. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Will can be reached on (571) 272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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April 27, 2006



Victor Batson  
Primary Examiner  
Art Unit 3671